

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 553 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUNILBHAI GALABHAI DATANIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 553 of 2001
MR CHETAN B RAVAL for Petitioner No. 1
Mr B D Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/01/2002

ORAL JUDGEMENT

The present revision application has been filed under section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code') read with section 401 of the Code challenging the judgment and order dated 16.10.2001

recorded in Criminal Appeal No.74/91 by the learned Addl.Sessions Judge of the City Sessions Court, Court No.17 at Ahmedabad City, dismissing the said appeal of the present applicant and confirming the judgment and conviction order dated 13.9.1999 recorded by the learned Metropolitan Magistrate, Court No.3 at Ahmedabad City in Criminal Case No.805/95, under which the learned Metropolitan Magistrate convicted the present applicant for offence punishable under Section 498-A of IPC read with section 114 of IPC and sentencing him to suffer S.I. for six months and directing him to pay fine of Rs.500/-. The learned Metropolitan Magistrate further directed that in case of non-payment of fine, the applicant shall undergo further S.I. for one month.

2. The facts of the case of the prosecution against the present applicant and other accused persons before the trial court may be briefly stated as follows:

That the present applicant, original accused no.1 in the aforesaid Criminal Case No.805/95 is the husband of the informant-wife. The prosecution has alleged in the said case that after the marriage, the present applicant, in the company of other four accused persons, who have been tried in the aforesaid criminal case before the Court, ill-treated the applicant and cruelty was extended to her. Therefore, FIR was filed and it resulted in a criminal case registered against the applicant and other accused persons as Criminal Case No.805/95. At the commencement of the case before the learned Magistrate, the applicant and other accused persons were supplied with copies of police investigation papers. Charge was framed. The applicant and other accused persons pleaded not guilty to the aforesaid charge. The prosecution produced evidence before the court below. The Court also recorded further statement of the accused persons under Section 313 of the said Code and after hearing the parties, the Court found all the accused persons, including the applicant, guilty for the offence punishable under Section 498-A of IPC and sentenced them as aforesaid.

3. Two separate Criminal Appeals were preferred. Criminal Appeal No.71/99 was preferred by Geeta Hasmukhlal and Hasmukhlal Kasturbhai whereas Criminal Appeal No.74/99 was preferred by the present applicant along with the two other accused persons - Galabhai and Vinuben. The learned Addl.City Sessions Judge, on hearing the said appeal, allowed Criminal Appeal No.71/99 with respect to all the three appellants therein and directed that they be acquitted of all the charges in

question. However, Criminal Appeal No.74/99 was partly allowed. The two other appellants No.2 and 3 came to be acquitted by the learned Judge. At the same time, the conviction and sentence against the present applicant were confirmed by the learned Judge.

4. Feeling aggrieved by the said judgment and conviction order, the applicant has preferred this Revision Application before this Court. It has been mainly contended here that the learned Addl.City Sessions Judge has committed serious illegality in appreciating the evidence against the applicant. It is also contended that there was no evidence or other material on record to prove the offence against the applicant and, therefore, the judgment and order of the learned Addl.City Sessions Judge are illegal and erroneous and deserve to be set aside. The applicant, has therefore, prayed that the present Revision be allowed, the judgment and conviction order of the learned Addl.City Sessions Judge in Criminal Appeal No.74/99 be set aside, the applicant be acquitted from the charge as aforesaid and he may be set at liberty forthwith.

5. I have heard the learned Advocate for the applicant. I have also heard Mr B D Desai, learned APP appearing for the State. They have taken me through the record of this Revision Application.

6. Learned Advocate for the applicant has argued at length that there was no proof of cruelty or ill-treatment extended by the applicant against the original informant and, therefore, the judgment and conviction order recorded by the two courts below are illegal and erroneous. It should be considered that while hearing the appeal, the learned Addl.City Sessions Judge has taken into consideration a fact that the present applicant has contended that the original informant Gauriben was not the legally married wife of the applicant and that, that fact would amount to legal cruelty extended by the applicant towards Gauriben.

7. It seems to be a matter of record that right from the beginning the applicant had taken a contention that Gauriben was not the legally married wife of the applicant. The said contention was raised before the trial court also. Again the said contention was repeated before the Court of Sessions. Ultimately, the two courts have believed that Gauriben was a legally married wife of the applicant. Even for that purpose, cogent reasons have been recorded by both the courts below. In that view of the matter, it cannot be said that Gauriben is

not proved to be the legally married wife of the applicant. Once Gauriben is found to be legally married wife of the applicant, then it goes without saying that the applicant had extended cruelty in the eye of law by saying that Gauriben was not his legally married wife.

8. Even otherwise, the evidence on record says that the present applicant had extended cruel treatment towards Gauriben. For this purpose, the prosecution has examined certain witnesses. As stated by the learned Magistrate during the course of the judgment, it is found from the said judgment that following witnesses have been examined by the prosecution before the trial court.

- (i) Gauriben Sunilbhai
- (ii) Kamuben Bhurabhai
- (iii) Jayantibhai Bhurabhai
- (iv) Bhurabhai Pappubhai
- (v) Meenaben Rameshbhai
- (vi) P.S.I. A G Joshi
- (vii) P.S.I. R K Zala
- (viii) P.I. , D D Raizada

9. The trial court as well as the Sessions Court both have appreciated the evidence on record and on appreciation of the said evidence, both have recorded concurrent findings of fact that it was proved on record that cruel treatment was extended by the applicant towards Gauriben.

10. Learned Advocate for the applicant has argued at length that the witnesses have given evidence with respect to the alleged cruelty against all the five accused persons before the trial court. However, the learned Addl. Sessions Judge has found that cruelty was proved against the applicant and not against the remaining accused persons. It is, therefore, argued by the learned Advocate for the applicant that when similar set of evidence alleges that cruel treatment was extended by the five accused persons and when the cruel treatment is not held to have been proved against four other accused, the Sessions Court could not have convicted the applicant by holding that cruel treatment on the part of the applicant has been proved. Now, it is well settled that when the allegations are made against so many accused persons and when the evidence is also brought against those accused persons, then it is for the court to find out, by appreciation of evidence, as to who committed the offence and who had not committed the offence. On such appreciation of evidence, the learned Addl. Sessions Judge found that the allegations made

against the applicant were well founded and, therefore, his conviction should be upheld. On appreciation of the said piece of evidence, the learned Judge found that the evidence and allegations against the remaining accused persons were not well founded and, therefore, they should be acquitted. In above view of the matter, when the evidence has been properly weighed and considered by the learned Addl. Sessions Judge and when the factual aspect has been properly considered by the said Court, then it is not open to this court to reappraise the evidence in a Revision Application. It is well settled that power, function and jurisdiction of this Court in entertaining Criminal Revision Applications are very limited. This Court cannot reappraise the evidence before it. We have to consider whether there is any illegality in holding the present applicant guilty. It has to be made clear apart from the above factual aspect of the case. Learned Advocate for the applicant was not in a position to argue that the conviction is illegal.

11. Here we can consider a case of Ramaben v. State of Gujarat, reported in 1992(2) GLR 1530. There it has been observed that reappraisal of evidence is ordinarily not permitted in revision unless a very strong case is made out and shown that the findings are perverse. It has also been observed that it cannot be done simply because the Court thinks that the lower court has taken erroneous view in recording any finding. It is further observed that findings of fact cannot be altered unless it is found to be perverse. Therefore, before entertaining a revision, it has to be shown and found that the findings of the trial court or of the Lower Appellate Court are illegal and perverse. In the present case, we find that there are findings of facts recorded on proper appreciation of evidence. No illegality is shown to have been committed in appreciation of evidence. In that view of the matter, it is not open to this Court to reverse the findings of fact recorded by the learned Addl. Sessions Judge against the applicant about the cruel treatment said to have been extended by the applicant towards Gauriben. Almost a similar view was taken in the case of Kantilal P Chavda v. Nanubhai Kantilal Chavda, reported in 1992 (2) GLR 1520. There also it has been observed that revisional powers are not appellate powers and they can be exercised to do justice and not to do injustice even if the order sought to be revised is not in conformity with law.

12. It is, therefore, clear that reappraisal of evidence is not permitted in Criminal Revision and, therefore, if once it is found that the evidence cannot

be reappreciated, then there is no illegality in appreciation of evidence and the findings recorded by the learned Addl.Sessions Judge are not found to be illegal and perverse and, therefore, they cannot be interfered with in this Revision.

13. It has next been contended by the learned Advocate for the applicant that father of the applicant Galabhai has passed away and Vinuben is a widow and, therefore, looking to the aforesaid fact and circumstance, it would be in the fitness of things to reduce the jail sentence inflicted and imposed upon the applicant. In my opinion, this would not be a ground for reducing the quantum of punishment imposed upon the applicant by the learned Magistrate. After all Gauriben is found to be the legally married wife of the applicant and even from the point of view of humanity, ill-treatment was not required to be extended to her. It is to be considered that the maximum punishment provided for the offence punishable under Section 498-A of IPC is three years and yet the learned Magistrate has awarded sentence of six months only. Considering the nature of offence and considering the human aspect of a woman involved in the case, it cannot be said that the sentence imposed is very harsh. In the premises, I am of the opinion that the sentence imposed is not excessive and the above ground cannot be taken to be sufficient for reducing the quantum of punishment.

14. For the foregoing reasons, I find that there is no merit in the present Revision Application and it is found that the learned Addl.Sessions Judge has properly appreciated the evidence on record and there is no illegality in appreciation of evidence. This Revision application is accordingly dismissed. The judgment and order passed by the learned Addl.Sessions Judge in the above referred Criminal Appeal are hereby confirmed.

7.1.2002 [D P Buch, J.]
msp